

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

MARY LYNN COFFEL,

Petitioner,

v.

Civil No. 07-11927-BC  
Honorable Thomas L. Ludington

CLARICE STOVALL,

Respondent.

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**OPINION AND ORDER DENYING THE PETITION**  
**FOR A WRIT OF HABEAS CORPUS**

Petitioner Mary Lynn Coffel a state prisoner currently confined at the Scott Correctional Facility in Plymouth, Michigan, seeks the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner pleaded *nolo contendere* to second-degree criminal sexual conduct in the Wexford County Circuit Court and was sentenced to 86 months to 15 years imprisonment in 2005. In her application, Petitioner asserts that the state trial court erred in the scoring of an offense variable. The Court finds that Petitioner has failed to state a claim upon which habeas relief may be granted. The Court, therefore, will deny the petition.

I.

Petitioner's conviction arises from a sexual assault incident involving a girl under 13 years of age. Petitioner was initially charged with first-degree criminal sexual conduct and being a fourth habitual offender, but those charges were dropped in exchange for her plea to second-degree criminal sexual conduct, which was entered on April 18, 2005. At the sentencing hearing, an objection was made to the scoring of offense variable 11 (sexual penetration) for which Petitioner was scored 25 points. According to Petitioner, the preliminary examination testimony presented

conflicting testimony on the issue of penetration. At the hearing, the victim testified that Petitioner “put two fingers in my private spot” at the hearing. Shortly after the incident, however, the girl had told her mother and a nurse that she did not remember what had happened. The trial court denied the defense objections and scored offense variable 11 at 25 points. The trial court imposed a sentence at the top end of the guideline range with a term of 86 months to 15 years imprisonment.

Petitioner filed a delayed application for leave to appeal with the Michigan Court of Appeals, which was denied for lack of merit in the grounds presented. *See People v. Coffel*, No. 269557 (Mich. App. May 25, 2006) (unpublished). The Michigan Supreme Court also denied Petitioner’s application for leave to appeal. *See People v. Coffel*, 477 Mich. 870, 721 N.W.2d 192 (2006).

Petitioner’s habeas application was timely filed. She seeks habeas relief asserting that the trial court erred in scoring offense variable 11 of the state sentencing guidelines because the scoring required findings of fact which were not established beyond a reasonable doubt. This claim was fairly presented to the Michigan appellate courts.

## II.

Promptly after the filing of a petition for habeas corpus, the Court must undertake a preliminary review of the petition to determine whether “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4, RULES GOVERNING § 2254 CASES; *see also* 28 U.S.C. § 2243. If, after preliminary consideration, the Court determines that the petitioner is not entitled to relief, the Court must summarily dismiss the petition. *Id.*, *see also Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970) (district court has the duty to “screen out” petitions that lack merit on their face). A federal district court is authorized to summarily dismiss a habeas corpus petition if it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to federal habeas relief.

*See McFarland v. Scott*, 512 U.S. 849, 856 (1994); *Carson v. Burke*, 178 F.3d 434, 436 (6th Cir. 1999); Rules Governing § 2254 Cases, Rule 4, 28 U.S.C. foll. § 2254. No response to a habeas petition is necessary when the petition is frivolous, obviously lacks merit, or where the necessary facts can be determined from the petition itself without consideration of a response from the State. *See Allen*, 424 F.2d at 141; *Robinson v. Jackson*, 366 F. Supp. 2d 524, 525 (E.D. Mich. 2005). After undertaking the review required by Rule 4, the Court concludes that the sentencing claim raised in the petition is meritless, such that the petition must be denied.

### III.

Petitioner's claim is reviewed against the standards established by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA). This Act "circumscribe[d]" the standard of review federal courts must apply when considering applications for a writ of habeas corpus raising the question of effective assistance of counsel, as well as other constitutional claims. *See Wiggins v. Smith*, 539 U.S. 510, 520 (2003). The AEDPA applies to all habeas petitions filed after the effective date of the Act, April 24, 1996. *Lindh v. Murphy*, 521 U.S. 320, 336 (1997). Because Petitioner's application was filed after that date, the provisions of the AEDPA, including the amended standard of review, apply to this case.

As amended, 28 U.S.C. § 2254(d) imposes the following standard of review for habeas cases:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Therefore, federal courts are bound by a state court's adjudication of a petitioner's claims unless the state court's decision was contrary to or involved an unreasonable application of clearly established federal law. *Franklin v. Francis*, 144 F.3d 429, 433 (6th Cir.1998). Mere error by the state court will not justify issuance of the writ; rather, the state court's application of federal law "must have been objectively unreasonable." *Wiggins v. Smith*, 539 U.S. at 521 (quoting *Williams v. Taylor*, 529 U.S. 362, 409 (2000)) (internal quotes omitted). Additionally, this Court must presume the correctness of state court factual determinations. 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct."); see also *Austin v. Jackson*, 213 F.3d 298, 300 (6th Cir. 2000) ("All factual findings by the state court are accepted by this Court unless they are clearly erroneous.").

The United States Supreme Court has explained the proper application of the "contrary to" clause as follows:

A state-court decision will certainly be contrary to [the Supreme Court's] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases. . . .

A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [the Court's] precedent.

*Williams*, 529 U.S. at 405-06.

The Supreme Court held that a federal court should analyze a claim for habeas corpus relief under the "unreasonable application" clause of § 2254(d)(1) "when a state-court decision unreasonably applies the law of this Court to the facts of a prisoner's case." *Id.* at 409. The Court defined "unreasonable application" as follows:

[A] federal habeas court making the “unreasonable application” inquiry should ask whether the state court’s application of clearly established federal law was objectively unreasonable. . . .

[A]n unreasonable application of federal law is different from an incorrect application of federal law. . . . Under § 2254(d)(1)’s “unreasonable application” clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.

*Id.* at 409, 410-11. *See also* *Dorchy v. Jones*, 398 F.3d 783, 787-88 (6th Cir. 2005); *McAdoo v. Elo*, 365 F.3d 487, 493 (6th Cir. 2004); *Rockwell v. Yukins*, 341 F.3d 507, 512 (6th Cir. 2003) (en banc).

In this case, the state courts denied Petitioner’s applications for leave to appeal in standard orders and did not clearly address her claim as a matter of federal law. Accordingly, this Court must conduct an independent review of the state courts’ decisions. *See Harris v. Stovall*, 212 F.3d 940, 943 (6th Cir. 2000). This independent review requires the federal court to “review the record and applicable law to determine whether the state court decision is contrary to federal law, unreasonably applies clearly established law, or is based on an unreasonable determination of the facts in light of the evidence presented.” *Id.* This independent review “is not a full, *de novo* review of the claims, but remains deferential because the court cannot grant relief unless the state court’s result is not in keeping with the strictures of the AEDPA.” *Id.*

As noted, Petitioner asserts that she is entitled to habeas relief because the trial court erred in scoring offense variable 11 of the Michigan sentencing guidelines. Specifically, Petitioner contends that the scoring of that variable required the trial court to make a factual finding of digital penetration which was not established beyond a reasonable doubt in violation of her rights under the United States Supreme Court’s decision in *Blakely v. Washington*.

To the extent that Petitioner challenges the scoring of her sentencing guidelines under state law, she is not entitled to relief from this Court. A claim that the state sentencing guidelines were

incorrectly scored fails to state a claim upon which federal habeas relief can be granted. *See, e.g., Cook v. Stegall*, 56 F. Supp. 2d 788, 797 (E.D. Mich. 1999).

Petitioner also cannot prevail on her claim that she is entitled to habeas relief because the trial court relied upon facts not presented at the plea or sentencing hearings in imposing her sentence in violation of the Sixth Amendment and Fourteenth Amendment. *See Blakely v. Washington*, 543 U.S. 296, 303-05 (2004) (state trial court's action in sentencing defendant beyond the statutory maximum of the standard range for his offense based upon judicial finding of deliberate cruelty violated Sixth Amendment right to trial by jury). *Blakely* involved a trial court's departure from a state's determinate sentencing scheme. Michigan, by contrast, has an indeterminate sentencing system in which the defendant is given a sentence with a minimum and a maximum sentence. The maximum sentence is not determined by the trial judge but is set by law. *See People v. Claypool*, 470 Mich. 715, 730 n. 14, 684 N.W.2d 278 (2004) (citing Mich. Comp. L. § 769.8). The minimum sentence for a defendant is based on the applicable sentencing guidelines ranges. *Id.* Under Michigan law, only the minimum sentence must presumptively be set within the appropriate sentencing guidelines range. *See People v. Babcock*, 469 Mich. 247, 255 n. 7, 666 N.W.2d 231 (2003) (citing Mich. Comp. L. § 769.34(2)). The trial judge sets the minimum sentence, but can never exceed the statutory maximum sentence. *See Claypool*, 470 Mich. at 730 n. 14. Indeterminate sentencing schemes, unlike determinate sentencing schemes, do not infringe on the province of the jury. *See Blakely*, 542 U.S. at 304-05, 308-09.

In *People v. Drohan*, 475 Mich. 140, 160-64, 715 N.W.2d 778 (2006), the Michigan Supreme Court held that Michigan's indeterminate sentencing scheme does not offend the Sixth Amendment right to trial by jury because a defendant is always subject to the statutory maximum sentence for purposes of *Blakely* and the Sixth Amendment does not entitle a defendant to a sentence

below the statutory maximum. Because *Blakely* does not apply to indeterminate sentencing schemes like the one utilized in Michigan, the trial court's scoring of the sentencing guidelines did not violate Petitioner's constitutional rights. See *Jones v. Bergh*, 2006 WL 1007602, \*1-2 (E.D. Mich. April 17, 2006); *George v. Burt*, 2006 WL 156396, \*5 (E.D. Mich. Jan. 20, 2006); *Walton v. McKee*, 2005 WL 1343060, \*3 (E.D. Mich. June 1, 2005). Petitioner has thus failed to state a claim upon which habeas relief may be granted as to this issue.

IV.

For the reasons stated, the Court concludes that Petitioner is not entitled to federal habeas relief on the claim contained in her petition.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus [dkt #1] is **DENIED**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: May 15, 2007

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 15, 2007.

s/Tracy A. Jacobs  
TRACY A. JACOBS